

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10509 of 2016
Date of decision: 30.09.2016

Balbir Singh

... Petitioner

Vs.

Financial Commissioner (Revenue), Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. P.P.S. Brar, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned order dated 19.01.2016 (Annexure P-4) passed by Financial Commissioner (Revenue), Punjab, whereby he dismissed revision of the petitioner, upholding the order dated 06.05.2015 (Annexure P-2) passed by Commissioner, Patiala Division, Patiala, appointing respondent No.4 as Lambardar in place of the petitioner, he has approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned orders.

Heard learned counsel for the petitioner.

It has not been disputed before this Court that respondent No.4 was more educated than the petitioner. He was 12th pass, whereas petitioner studied only upto 7th class. Respondent No.4 is five years younger than the petitioner. Petitioner was having only 19 kanal of land, whereas respondent No.4 was

owning 19 acres of land. It is also a matter of record that all the subordinate revenue officers right from Assistant Collector 2nd Grade, Assistant Collector 1st Grade as well as Sub Divisional Officer (Civil) recommended the name of respondent No.4 for appointment to the post of Lambardar.

In addition to the above, respondent No.4 also remained President of Shaheed Udham Singh Sports Club continuously for a period of six years. However, all the abovesaid relevant factors were not properly considered and appreciated by District Collector, while passing the order dated 15.01.2015 (Annexure P-1), whereby the petitioner was appointed as Lambardar. It is so said because a bare perusal of the order passed by District Collector would show that it was respondent No.4 who was having clear edge on the petitioner which makes the order passed by District Collector patently illegal.

A bare perusal of the order passed by District Collector would show that neither the abovesaid comparative merits of both the candidates were properly discussed nor appreciated in the correct perspective. In this view of the matter, the order passed by District Collector was suffering from patent illegality and perversity, besides being a non-speaking order. The Collector did not record any reason, much less cogent reasons, to prefer the petitioner over and above respondent No.4 in spite of the abovesaid glaring fact situation available on the record.

Under these circumstances, it can be safely concluded that District Collector fell in serious of law, while passing his order (Annexure P-1), which was not sustainable in law and was rightly set aside by the Commissioner, while passing his impugned order dated 06.05.2015 (Annexure P-2). A combined reading of both the impugned orders passed by Divisional Commissioner as well

as Financial Commissioner would make it crystal clear that both these officers were conscious of the fact that choice of Collector was not to be set aside lightly. However, before passing their respective impugned orders, Commissioner as well as Financial Commissioner recorded cogent findings that the order passed by District Collector was suffering from patent illegality and perversity and the same was not sustainable.

Present one is not a case, where the choice of District Collector was being simply replaced by the Commissioner by his own choice. Before setting aside the order passed by District Collector, learned Commissioner recorded sound reasons on each and every relevant aspect of the matter, referring to comparative merits of both the candidates, which were neither properly discussed nor appreciated by District Collector. Thus, learned Commissioner as well as Financial Commissioner did not commit any error of law, while passing their respective impugned orders and the same deserve to be upheld, for this reason also.

No doubt, it is the settled proposition of law that choice of District Collector in the matters of the appointment of Lambardar is not to be upset by the higher revenue authorities lightly, until and unless the order passed by District Collector is found suffering from patent illegality or perversity. However, it is equally true that this would not be an absolute rule in every given situation. It is so said because each case is to be considered and decided on the basis of its own peculiar facts and circumstances.

So far as the case in hand is concerned, as noticed hereinabove, respondent No.4 was having much better and preferential claim than the petitioner in every respect, including age, education, ownership of land,

participation in social activities and recommendation by all the lower revenue authorities. Since District Collector miserably failed to appreciate all these relevant factors in favour of respondent No.4 at the time of appointing the petitioner vide order (Annexure P-1), the same has been found to be suffering from patent illegality and perversity, not only by the Commissioner and Financial Commissioner but by this Court as well. Such a patently illegal order cannot be upheld and it was rightly set aside by the Commissioner as well as Financial Commissioner, thus, the impugned orders deserve to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders passed by Commissioner as well as Financial Commissioner have not been found suffering from any patent illegality or perversity, the same deserve to be upheld. The writ petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant writ petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

30.09.2016

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No